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U.S. DISTRICT COURT OF  
IDAHO DISTRICT OF BOISE  
BOISE, IDAHO

AUG 24 2004

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B.  
HINCKLEY, JACQUELINE T.  
HLADUN, MARILYN J. CRAIG,  
JEFFERY P. CLEVINGER, and  
TIMOTHY C. KAUFMANN, individually  
and on behalf of those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a  
Minnesota corporation,

Defendant.

Case No. CIV 01-0244-S-BLW

**DEFENDANT MICRON ELECTRONICS,  
INC.'S STATEMENT OF DISPUTED  
FACTS IN SUPPORT OF  
MEMORANDUM IN RESPONSE TO  
PLAINTIFFS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

**DEFENDANT MICRON ELECTRONICS, INC.'S STATEMENT OF DISPUTED FACTS  
IN SUPPORT OF MEMORANDUM IN RESPONSE TO PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT - 1**

Boise-174773.2 0026493-00046

**ORIGINAL** 268

Defendant Micron Electronics, Inc. ("MEI"), by and through its attorneys, Stoel Rives LLP, and pursuant to Local Rule 7.1(c), hereby submits its Statement of Disputed Facts in Support of Memorandum in Response to Plaintiffs' Motion for Partial Summary Judgment.

## I. INTRODUCTION

Plaintiffs' Statement of Undisputed Facts includes four basic alleged "facts" purportedly supported by long lists of deposition testimony and colored with argument. Plaintiffs' four basic allegations are distilled as follows:

1. Marvin Masteller was converted from salary to hourly wages and told he would not be paid for overtime;
2. Employees worked off the clock and were not paid for that time;
3. Employees were told implicitly and explicitly that they would not be paid for off-the-clock work; and
4. The employees' supervisors knew that they were working off the clock.

Ultimately, these alleged "facts" do not support a motion for summary judgment, because they fail to meet the legal standard as set forth in MEI's response brief and cross-motion for summary judgment. In addition, Plaintiffs' Statement of Undisputed Facts also raises factual and evidentiary issues addressed in a separate motion to strike. The purpose of this brief is to (1) set forth evidence demonstrating that Plaintiffs' alleged undisputed facts are actually disputed by material facts in the record and (2) gather some of the available evidence demonstrating MEI's good-faith efforts to comply with the Fair Labor Standards Act ("FLSA").

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## II. STATEMENT OF UNDISPUTED FACTS

### A. Problems with Plaintiffs' Statement of Undisputed Facts.

The central problem with Plaintiffs' Statement of Undisputed Facts is the argumentative and narrative style. The alleged facts are not numbered, are based on misleading deposition excerpts, and require levels of unreasonable inference or assumption in order to meet Plaintiffs' conclusions. These problems are addressed more directly in a separate motion to strike. Nonetheless, MEI has attempted to number the alleged "facts" and address them individually here.

In italics, below, are the basic facts alleged by Plaintiffs. Below these "facts" are actual facts in the record that MEI has gathered to demonstrate what is in dispute.

1. **Marvin Masteller was converted from salary to hourly employment and told he could work all of the hours he wanted to but he would not be paid for overtime.**

When Mr. Masteller was converted from salary to hourly employment, his hourly rate was based on a straight calculation of his previous year's salary. (Masteller Depo. at 23:7-13.)<sup>1</sup> Mr. Masteller was always paid for the time he actually recorded. (*Id.* at 58:6-11.) Mr. Masteller was never told he should work off the clock; Mr. Masteller's supervisor simply stated that he would not authorize overtime. (*Id.* at 42:17-43:5.)

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<sup>1</sup> To avoid overburdening the Court with lengthy citations, all citations to the depositions attached as exhibits to the Omnibus Affidavit of Gregory C. Tollefson in Support of Defendant Micron Electronics, Inc.'s (1) Memorandum in Response to Plaintiffs' Motion for Partial Summary Judgment, (2) Motion to Strike, and (3) Cross-Motion for Partial Summary Judgment Re: Willfulness (the "Omnibus Affidavit") will be cited as, "[Deponent] Depo. Page: Line." All of the depositions cited herein are attached to the Omnibus Affidavit in alphabetical order.

When Mr. Masteller's supervisor discovered Mr. Masteller was working off the clock, Mr. Masteller was reprimanded. (*Id.* at 48:22-51:4.) In fact, Mr. Masteller left MEI, because they were "detering" him from working overtime and reprimanding him for not accurately recording all of his time. (*Id.* at 47:1-11.) In fact, according to Mr. Masteller, "they were basically telling me to go home." (*Id.* at 48:1-2.)

**2. Employees worked off the clock and were not paid for that time.**

For purposes of this argument, MEI acknowledges the obvious circumstance that some employees were not paid for time they failed to report, simply because MEI has no way of accounting for time that is not accurately reported by employees.

Nevertheless, Plaintiffs cite to some testimony regarding working lunches, ostensibly to suggest that the inside sales representatives were forced to work through lunch and not account for that time. In direct conflict with this assumed "fact" is the testimony of supervisor Mark Cox in the government sales group, who explained that working lunches were "rarely done" and "we paid sales representatives for the time." (Affidavit of Mark A. Cox (Docket No. 115) ("Cox Aff.") ¶ 13.)

In addition, the testimony of supervisor Jay Church directly contradicts that of two inside sales representatives under his supervision in the consumer and commercial group, Jeffery Clevenger and Alan Garcia, who testified that they were not allowed to report the time spent eating pizza over lunch. (Affidavit of Jay Church (Docket No. 114) ("Church Aff.") ¶ 8 (approved all overtime submitted), ¶ 11 (never told inside sales representatives under his supervision to work off clock).) (*See also* Cox Depo 80:9-12.)

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**3. Employees were told implicitly and explicitly that they would not be paid for off-the-clock work.**

Again, for purposes of this argument, MEI acknowledges the obvious circumstance that some employees were not paid for off-the-clock work, which is, by logical definition, unreported and thus unaccountable. Nonetheless, to address a related issue, all of the relevant supervisors testified that they did not encourage their employees to work off the clock or not accurately record all the time they worked. (Affidavit of Marcus J. Auchampach (Docket No. 109) (“Auchampach Aff.”) ¶ 8; Affidavit of Kimberly Boschce (Docket No. 110) (“Boschce Aff.”) ¶ 7; Declaration of William C. Brakeman (Docket No. 120) (“Brakeman Decl.”) ¶ 7; Affidavit of Dominic Casey (Docket No. 111) (“Casey Aff.”) ¶ 10; Affidavit of Larry R. Chase (Docket No. 113) (“Chase Aff.”) ¶ 8; Church Aff. ¶¶ 11, 13; Cox Aff. ¶¶ 8, 11; Declaration of Jay W. Ellis (Docket No. 108) (“Ellis Decl.”) ¶¶ 12; Affidavit of David J. Groeger (Docket No. 116) (“Groeger Aff.”) ¶¶ 8, 9; Affidavit of David R. McCauley, (Docket No. 118) (“McCauley Aff.”) ¶¶ 8, 9; Affidavit of Jaime Nava (Docket No. 117) (“Nava Aff.”) ¶¶ 7, 10; Affidavit of Anthony Robinson (Docket No. 112) (“Robinson Aff.” ¶¶ 7-9).

Further, many inside sales representatives who are or were opt-in members of the class here testified that they were never told not to record overtime that they worked. (Clevenger Depo. at 77:12-13, 106:2-10; Anderson Depo. at 40:24-41:1; Blair Depo. at 91:19-92:3, 95:20-96:8; DeRouch Depo. at 70:5-13; Ell Depo. at 103:14-20; 108:2-10; Fillmore Depo. 32:22-33:14; Ford Depo. 62:25-63:3; 76:11-77:10; 94:2-18; Garcia Depo. 65:22-66:7; Gardner Depo. 108:16-21, 118:7-24; Hagman Depo. 29:6-30:4; 53:12-56:3; Hope Depo. 60:19-62:5; 64:12-65:6;

Kestner Depo. 60:15-20; 61:23-62:3; Larscheid Depo. 79:24-80:6; Monahan Depo. 44:18-46:2; 53:19-21; Robertson Depo. 51:4-7; J. Wells Depo. 103:10-21).

In addition, there is testimony in direct conflict with the specific allegations cited in support of this claimed "undisputed fact." For example, the testimony of supervisor Jaime Nava directly contradicts that of Michael B. Hinckley, an inside sales representative under his supervision, who testified that he was told not to report overtime actually worked. (Hinckley Depo. 106:2-11; Affidavit of Jaime Nava (Docket No. 117) ¶ 4 (acted in accordance with MEI's overtime policies), ¶ 7 (approved all overtime submitted), ¶ 10 (never told inside sales representatives under his supervision they could not work more than 40 hours per week).)

**4. The employees' supervisors knew that they were working off the clock.**

This allegation is disputed by abundant facts in the record. Supervisors explained that they were not aware that any of their employees were working off the clock or not accurately reporting some of their time. (Morrison Depo. 60:13-17; Auchampach Aff. ¶ 7; Boschee Aff. ¶ 8; Brakeman Decl. ¶ 6; Casey Aff. ¶ 10; Chase Aff. ¶ 8; Church Aff. ¶¶ 9, 11, 13, 14; Cox Aff. ¶ 11; Ellis Decl. ¶ 12; Groeger Aff. ¶¶ 8-9; McCauley Aff. ¶ 7; Nava Aff. ¶ 8; Robinson Aff. ¶ 8.) Most supervisors also checked the timesheets of their employees and many, without more information, reasonably assumed that their employees were accurately reporting their time in accordance with company policy. (Auchampach Aff. ¶ 7; Boschee Aff. ¶¶ 6, 8; Brakeman Decl. ¶¶ 4, 6, 7; Casey Aff. ¶¶ 8, 10; Chase Aff. ¶ 6; Church Aff. ¶ 9; Cox Aff. ¶ 9; Ellis Decl. ¶ 10; Groeger Aff. ¶¶ 8-9; McCauley Aff. ¶ 7; Nava Aff. ¶ 8; Robinson Aff. ¶¶ 6, 8.)

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**B. Factual Support Demonstrating MEI's Good Faith Efforts to Comply with the FLSA**

There is sufficient evidence in the record demonstrating MEI's good faith efforts to comply with the FLSA's requirements. Nonetheless, the evidence gathered below is preliminary. Good faith has not been the focus of the litigation to date and further evidence of MEI's good faith efforts will be presented at or before trial.

1. To ensure FLSA compliance, MEI developed and implemented policies and procedures regarding overtime. (Exs. A-D to the First Affidavit of Gregory C. Tollefson ("First Tollefson Aff.") filed August 21, 2002 (Docket No. 122).)

2. Plaintiffs admit that these policies comply with all legal requirements, including the FLSA. (*See* Plaintiffs' Brief in Support of Motion for Conditional Certification at 12.)

3. MEI's policies expressly prohibit off-the-clock work and require all employees to accurately record all time worked. (*See* First Tollefson Aff. Ex.s A-D)

4. MEI's overtime policy included the following admonition regarding off-the-clock work: "No work should be performed off the clock. All time worked must be recorded. Failure to record all time worked will subject the employee to disciplinary action up to an[d] including termination." (First Tollefson Aff. Ex. C.)

5. All employees, including inside sales representatives of the various MEI divisions or subsidiaries, received the current timekeeping and overtime policies when they started working at MEI or one of its divisions or subsidiaries. (Anderson Depo. 27:22-29:2; Angus Depo. 22:7-20; Clevenger Depo. 36:22-37:23; Craig Depo. (Vol. I) 39:20-40:7; Ell Depo. 31:17-

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23; Fillmore Depo. 22:4-16; Garcia Depo. 48:2-49:2; Hagman Depo. 23:16-24:13; Hinckley Depo. (Vol. I) 93:2-8; Hladun Depo. (Vol. I) 26:15-22; Hodges Depo. 30:16-31:6; Kaufmann Depo. (Vol. I) 83:1-10; Keen Depo. 84:15-86:4; Kestner Depo. 22:21-24:25; Larscheid Depo. 27:14-28:5; Lee Depo. 25:16-23; Mattson Depo. 43:20-44:5; McGeorge Depo. 66:7-18; Monahan Depo. 23:18-25:2; Moser Depo. 36:10-37:23; Papero Depo. 18:22-19:16; Parrish Depo. 41:8-23; Smith Depo. (Vol. I) 137:5-24; J. Wells Depo. 55:9-19; T. Wells Depo. 73:1-7; Wing Depo. 51:16-18.)

6. Pursuant to MEI's policy, and as confirmed by individual admissions, the inside sales representatives were responsible for accurately reporting their time. (Angus Depo. 43:15-17; Auchambach Depo. 29:25-30:12; Blair Depo. 93:4-8; Cox Depo. 44:24-45:7; DeRouen 61:6-8, Ell Depo. 54:19-21; Keen Depo. 114:14-16; Kestner Depo. 27:2-13; Mattson Depo. 50:3-8; Monahan Depo. 40:24-41:4; Moser Depo. 49:14-17; Papero 56: 7-11; T. Wells Depo. 165:1-6.) (See also Auchampach Aff. ¶ 5; Boschec Aff. ¶ 7; Brakeman Decl. ¶ 4; Casey Aff. ¶ 8; Chase Aff. ¶ 6; Church Aff. ¶ 9; Cox Aff. ¶9; Ellis Decl. ¶ 10; Groeger Aff. ¶ 11; Nava Aff. ¶ 13; Robinson Aff. ¶ 6.)

7. Inside sales representatives were trained on how to accurately report their time. (See e.g. Angus Depo. 17:22-18:11; Ellis Depo. 48:13-49:1, 53:18-54:7, 79:10-16; Ferrara Depo. 17:2-5; Fillmore 22:25-23:9; Keen Depo. 100:14-16; Lee Depo. 32:12-15; McGeorge 79:11-14; Parrish 35:24-36:2.) (See also Auchampach Aff. ¶ 10, Chase Aff. ¶ 11, Groeger Aff. ¶ 11.) (See

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also Affidavit of Kim J Dockstader (Filed Under Seal) ("Dockstader Aff.") (Docket No. 125), Exs. A-N at ¶ 7 of each affidavit.)<sup>2</sup>

8. As part of their employment responsibilities, supervisors were expected to make sure timekeeping and overtime policies were observed by inside sales representatives. (Boschee Aff. ¶ 3, Brakeman Decl. ¶ 2, Cascy Aff. ¶ 4, Church Aff. ¶ 4, Cox Aff. ¶4, Ellis Decl. ¶ 4, Groeger Aff. ¶ 4, Nava Aff. ¶ 4, McCauley Aff. ¶ 3, Robinson Aff. ¶ 3.)

9. When supervisors discovered their employees were working off the clock, the employees were reprimanded for it. (Masteller Depo. 48:22-51:4; Robinson Aff ¶ 8.)

10. The overwhelming majority of the inside sales representatives testified that they were paid for all the time they actually reported, including overtime. (Angus Depo. 36:10-20; Blair Depo. 89: 9-19; Clevenger Depo. 70:25-71:16, 84:3-6; DeRouen Depo. 26: 7-12; Ell Depo. 40:11-13; Fillmore 27: 21-23; Garcia Depo. 65:22-66:7; Hagman Depo. 30:3-24; Henderson 81:3-10; Hodges 20:18-25, 21:11-13; Kaufmann Depo. at 86:12-17; Kestner 45:16-19, Larschied Depo. 40:4-11; Lee Depo. 42:24-43:2; Masteller Depo. 58:6-11; Mattson Depo. 39:17-19; Moffet Depo. 100:6-22, 222:8-12; Papero Depo. 24:18-22; Saari Depo. 44:25-45:3; Thom Depo. 53:11-16; T. Wells Depo. 141:13-17; Wing Depo. 56:10-13.) (*See also* Auchampach Aff. ¶ 9; Chase Aff. ¶ 10; Ellis Decl. ¶ 15; Nava Aff. ¶¶ 12-13.) Moreover, several inside sales representatives during the time period have testified that they reported and were paid for all of

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<sup>2</sup> These Exhibits are all affidavits of former inside sales representatives of various subsidiaries of MEI during the relevant time period, including: Rudeena E. Ballantyne, Douglas V. Eason, Miguel A. Flores, Brian A. Friel, Benjamin K. Jenkins, Niklas F. Kopp, Stephen E. Laats, James Ryan Miller, Jeremy Todd Points, Clint J. Pulsipher, Jason W. Salisbury, Brenton E. Schiefelbein, Sandra K. Wolfe, and Chaun J. Stone.

the time that they worked, including overtime. (Auchampach II Depo. 26:7-9, Fillmore Depo. 25:5-10, 25:25-26:9, 28:22-29:2, 29:17-24; Hagman Depo. 30:3-24; Hodges Depo. 20:14-24, 25:1-11, 46:2-5; Moser Depo. 51:3-10.)

11. To the extent any inside sales representatives failed to accurately record some of their time worked in violation of MEI's policies, they did so voluntarily and deliberately without disclosure or the knowledge of MEI or their supervisors. (Angus Depo. 40:13-43:17; Blair Depo. 92:4-96:17; Brakeman Depo. 97:14-18; Clevenger Depo. 70:11-20, 197:6-198:20; Ell Depo. 52:7-55:9; Ellis Depo. 87:5-19; Ford Depo. 82:4-7, 81:22-85:10; Kaufmann Depo. 98:11-20; Keen Depo. 114:9-25; Kestner Depo. 59:11-60:14; Larschied 30: 15-21; Masteller Depo. 54:18-55:14, 56:13-57:10; Monahan Depo. 42:2-46:2; T. Wells Depo. 165:1-14; Wing Depo. 69:17-22.)

### III. CONCLUSION

As demonstrated above, Plaintiffs' Statement of Undisputed Facts contains only four statements of fact, all of which are disputed by testimony highlighted above, which is already in the record. In addition, Plaintiffs' Statement of Undisputed Facts raises evidentiary issues discussed in further detail in Defendant Micron Electronics, Inc.'s Motion to Strike filed concurrently herewith.

DATED this 24th day of August, 2004.

STOEL RIVES LLP



Kim Bockstaele

**DEFENDANT MICRON ELECTRONICS, INC.'S STATEMENT OF DISPUTED FACTS  
IN SUPPORT OF MEMORANDUM IN RESPONSE TO PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT - 10**

Boise-174773.2 0026493-00046

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of August, 2004, I caused to be served a true copy of the foregoing **DEFENDANT MICRON ELECTRONICS, INC.'S STATEMENT OF DISPUTED FACTS IN SUPPORT OF MEMORANDUM IN RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT** by the method indicated below, addressed to the following:

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\_\_\_\_\_  
Kim Dockstader

**DEFENDANT MICRON ELECTRONICS, INC.'S STATEMENT OF DISPUTED FACTS  
IN SUPPORT OF MEMORANDUM IN RESPONSE TO PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT - 11**

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